



NH Department of Health & Human Services
Division for Children, Youth & Families

DCYF Standard Operating Procedure 1510.1 DETERMINING ICWA APPLICABILITY AND JURISDICTION

Policy Directive: **21-01**

Approved:

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Implements Policy: **1510**

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This SOP identifies how to determine ICWA applicability and jurisdiction.

Procedure

The following information is to support the implementation of the above referenced policy. This document shall not preclude staff from using their professional judgement based on individual

- I. For all cases where a child or their parents identify they are members of, or eligible to be members of, a federally recognized Indian tribe, the CPSW/JPPO will:
 - A. Inquire into the child's tribal status initially and throughout the case until tribal membership is confirmed or the CPSW/JPPO can document that the child is not an Indian child;
 - B. Ensure due diligence is made to identify the tribe(s) if there is "reason to know" the child is a member of, or eligible to be a member of, a federally recognized Indian tribe;
 - C. Treat the child as an Indian child, unless and until it is determined on the record that the child is not an Indian child (25 CFR 23.107);
 - D. Work with the ICWA Program Specialist or the DCYF Attorney to request documentation confirming tribal membership (only a tribe can confirm membership);
 1. Copies of tribal membership card(s) or other official documents confirming membership or eligibility for tribal membership are filed with the Court;
 - E. Confirm, on the court record, that DCYF or another party used due diligence to identify and work with the tribe to verify whether the child is a member, or a biological parent is a member and the child is eligible for membership; and
 - F. Document any information obtained that confirms or denies the child's membership or eligibility for membership in the case record.
- II. If new information is identified at any time during DCYF involvement that a child previously determined not to be an Indian child may be a member of (or eligible for

membership in) a federally recognized tribe, DCYF will ensure efforts are made to confirm membership.

- III. The parent/custodian of the Indian child and tribe may request a transfer to tribal jurisdiction at any stage and at any time, orally on the record or in writing, in each foster care or Termination of Parental Rights proceeding.
 - A. The Circuit Court must transfer to the tribal court unless:
 1. Either parent/custodian objects to such transfer;
 2. The tribal court declines the transfer; or
 3. The Circuit Court finds good cause exists not to transfer.
 - B. If the tribal court accepts the transfer, DCYF staff must cooperate to support the transfer of placement and care responsibility to a Tribal Title IV-E agency or an Indian tribe with a Title IV-E agreement in the same manner a child would be transferred to another state pursuant to policy 1585 ICPC When NH is the Sending State or policy 1591 Interstate Compact for Juveniles - Travel Permit, Transfer of Supervision, and Other Provisions.
 - C. When the transfer to the tribal court is completed, the Indian child's DCYF case is closed.

Frequently Asked Questions

Q1. How do I know if a tribe is federally recognized and who their designated ICWA notice recipients are?

- A** Federally recognized tribes and contact information can be found through the US Department of the Interior, Bureau of Indian Affairs website:
<http://www.bia.gov>.
- A** You may also contact the DCYF ICWA Program Specialist.

Q2. Does ICWA apply to delinquency cases?

- A** No. Pursuant to the United States Code, ICWA applies to cases in which there is a child custody proceeding and does not include placements resulting from an act which, if committed by an adult, would be deemed a crime. This means that if a delinquency petition is brought forward and the child is later placed, ICWA does not apply. However, for the permanency of the child, it is important to work with any identified tribes to support the youth, when possible.

Q3. Where should I be documenting my efforts to determine ICWA applicability in the case record?

- A** Places where this information may be documented include, but are not limited to:
- i. DCYF electronic information system contact log entries;
 - ii. Child/Youth Information Sheet (Form 1552); or
 - iii. Genogram.

Glossary and Document Specific Definitions

A - B C - D E - F G - I J - L M - N O - Q R - S T - V W - Z

Document Change Log

PD	Modification Made	Approved	Date